

REMARKS

By way of this Preliminary Amendment, Applicant has added new Claims 12-23. Claims 12-15 depend from Claim 1; Claims 16-17 depend from Claim 5; Claims 18-21 depend from Claim 8; and Claims 22-23 depend from Claim 11. Applicant submits that no new matter has been introduced with the addition of Claims 12-23.

Thus, Claims 1, 3-5, 8, 11 and 12-23 are now pending in this application. The Examiner rejected Claims 1, 3-5, 8 and 11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,764,694 ("the Rahamim patent"). This Preliminary Amendment amends Claims 1, 5, 8 and 11. Therefore, it is believed that Claims 1, 3-5, 8, 11 and 12-23 are patentably distinguished over the cited reference, and Applicant respectfully requests allowance of Claims 1, 3-5, 8, 11 and 12-23.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

The Examiner rejected Claims 1, 3-5, 8 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Rahamim.

Focusing in particular on amended independent Claim 1, in one embodiment of Applicant's invention, a device for testing the operation of a modem is disclosed, the device comprising: (1) a first communication port configured to be directly coupled to a modem thereby forming a primary communication link and (2) a second communication port configured to be coupled to a computer thereby forming a secondary communication link that bypasses the modem. The device is configured to send a signal via the secondary communication link to initiate the transmission of test data from the modem via the primary communication link.

Rahamim does not teach a device having a second communication port configured to be coupled to a computer thereby forming a secondary communication link that bypasses the modem. Rather, Rahamim discloses a self-testing modem (110) that is coupled to a computer (112). Referring in particular to Figure 1, the testing components (118, 120 and 132) suggested by the Examiner are coupled to a microcontroller (140) of the modem (110). Because the testing components are necessarily part of the modem, they cannot include a communication port configured to bypass the modem. In other words, any communication port coupled to the testing

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components (118, 120 and 132) would necessarily be coupled to the modem (110), and any communication link formed using the testing components would necessarily include the modem.

Because the reference cited by the Examiner does not disclose, teach, or suggest a second communication port configured to be coupled to a computer thereby forming a secondary communication link that bypasses the modem, Applicant asserts that amended Claim 1 is not obvious in view Rahamim. Therefore, Applicant respectfully submits that amended Claim 1 is patentably distinguished over the cited references and respectfully requests allowance of amended Claim 1.

Amended independent Claims 5, 8 and 11 are believed to be patentable for similar reasons and for the different aspects recited therein.

Though Claims 1, 5, 8 and 11 have been amended for clarification, these claim amendments were not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments.

Claims 3-4 and 12-15, which depend from Claim 1, are believed to be patentable because of the additional aspects recited therein.

Claims 16-17, 18-21 and 22-23, which depend from Claims 5, 8 and 11 respectively, are believed to be patentable because of the additional aspects recited therein.

REQUEST FOR TELEPHONE INTERVIEW

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicant's undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the effect of the arguments presented above. Applicant's attorney can be reached at (949) 721-2998 or at the number listed below.

CONCLUSION

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be

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resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved.

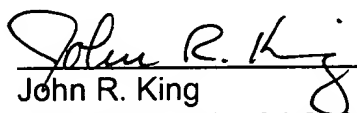
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 10/27/03

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